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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOWARD T. MARANO

Appeal 2008-003067
Application 10/007,370
Technology Center 3600

Decided: December 16, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
ANTON W. FETTING, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Howard T. Marano (Appellant) seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

“The present invention relates to project management systems in general, and to providing users of a system such as a project management or workflow system with one or more “to do” lists or work lists at a specified event occurrence such as when that user logs in to the system.”

Specification 1:11-14. “There is a need to be able to provide one or more work lists to each user or entity when a user logs in to a scheduling or workflow system where the schedule may be tailored to a user, a group or category of users, or an entire entity.” Specification 1:25-2:2. “The present inventions comprise a system and method for assigning an identifier to at least one of a plurality of displayable task schedules associated with a corresponding plurality of different entities, the identifier representing a task requiring action by an entity.” Specification 2:4-7.

¹ Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.”, filed Jun. 19, 2007) and Reply Brief (“Reply Br.”, filed Dec. 7, 2007), and the Examiner’s Answer (“Answer,” mailed Nov. 30, 2007).

Claims 1 and 18, reproduced below, are illustrative of the subject matter on appeal.

1. A method for assigning an identifier to at least one of a plurality of displayable task schedules, comprising the activities of:
 - a. initiating display of at least one interface menu supporting user entry of decision information for initiating execution of at least one executable procedure for automatically selecting a task from a plurality of different tasks and assigning an identifier representing a selected task to a particular task schedule of a plurality of displayable task schedules associated with a corresponding plurality of different entities, in response to received information identifying an event, said particular task schedule being associated with a particular entity of said corresponding plurality of different entities;
 - b. receiving decision information entered via said at least one interface menu; and
 - c. applying the received decision information and initiating execution of said at least one executable procedure, in response to received information identifying an event, to automatically select a task from a plurality of different tasks and assign a task representative identifier representing a selected task to be performed by said particular entity, to said task schedule associated with said particular entity.
18. A system for assigning an identifier to at least one of a plurality of displayable task schedules comprising:
 - a. a display processor for initiating display of at least one interface menu supporting user entry of decision information for initiating execution of at least one executable procedure for automatically

selecting a task from a plurality of different tasks and assigning an identifier representing a selected task to a particular task schedule of a plurality of displayable task schedules associated with a corresponding plurality of different entities, in response to received, information identifying an event, said particular task schedule being associated with a particular entity of said corresponding plurality of different entities; and

b. an interface processor for receiving decision information entered via the at least one interface menu and for automatically initiating execution of said at least one executable procedure, in response to received information identifying occurrence of an event to automatically select a task from a plurality of different tasks and automatically assign a task representative identifier representing a selected task to be performed by said particular entity, to said task schedule associated with said particular entity.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Mayhak, Jr. US 2001/0051888 A1 Dec. 13, 2001

Srimuang US 2003/0061087 A1 Mar. 27, 2003

The following rejections are before us for review:

1. Claims 1-11 and 14-19 are rejected under 35 U.S.C. §102(e) as being anticipated by Srimuang.
2. Claims 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Srimuang and Mayhak.

ISSUES

The first issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 1-11 and 14-19 under 35 U.S.C. §102(e) as being anticipated by Srimuang. In particular, the major issues are whether Srimuang describes an executable procedure for automatically selecting a task from a plurality of different tasks and/or an executable procedure for automatically selecting a particular task schedule from a plurality of task schedules to assign a task identifier to as recited in independent claims 1, 8, 15, 16, 17, and 18. Another issue is whether Srimuang describes that the executable procedure removes a task representative identifier from a task schedule in response to a triggering event as recited in claim 14.

The second issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Srimuang and Mayhak. In particular, the issue is whether the combination of Srimuang and Mayhak teaches that the task allocation and triggering event are conditioned upon the coincidence of a plurality of occurrences and teaches acquiring data to determine the coincidence of the plurality of occurrences.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. The Specification does not contain an express definition of “task.”
2. A definition of “task” is “a piece of work assigned or done as part of one’s duties.” *See American Heritage Dictionary* 1245 (2nd College Ed. 1982.)(First entry for “task.”)
3. The Examiner construed “task” to mean a “definite piece of work assigned to an entity.” Answer 13-14.

The scope and content of the prior art

Srimuang

4. Srimuang describes scheduling and calendaring software. Srimuang [0002].
5. Srimuang describes a calendar database for storing calendars for all members. Srimuang [0072].
6. In paragraph [0013], Srimuang states:

As another variation in scheduling appointments, while the customer may schedule a single service appointment to occur during some desired time interval, the scheduling program may specifically schedule the various people and resources for only portions of the service time interval where they are needed. For example, if an appointment for a medical exam is to last one hour, the appointment may require: (1) a nurse for the first 10 minutes of the hour and the last 20 minutes of the hour; (2) an examination room for the first 20 minutes and last 20 minutes of the hour; (3) an x-ray room for the middle 20 minutes of the hour; and (4) a doctor for the final 30 minutes of the hour.
7. Srimuang describes that an administrator defines what combination of people and resources are need for a service appointment and “because the customer does not need to know what combination of

individuals and resources are required for the type of service that he wants this is taken care of automatically by service data 132 defined by group administrator for the vendor.” Srimuang [0080].

8. Srimuang states that it is a feature of the invention that a request for service can be used to automatically schedule a combination of people and resources using a single unitary request. Srimuang [0109].
9. Srimuang describes an availability-check-software module that checks the availability of people and resources in order to schedule a requested service or not. Srimuang [0081] and [0110].
10. Srimuang describes allowing customers to “revise” employee calendars. Srimuang [0094].

Mayhak

11. Mayhak describes a computer-aided system for scheduling employees in a clinical environment. Mayhak [0002].
12. Mayhak describes using a patient profile, which includes treatment information and a patient’s schedule (Mayhak [0054]-[0055]) and an employee profile, which includes capability data and schedule information (Mayhak [0058]-[0059]), to schedule treatment for a patient. Mayhak [0065].

Any differences between the claimed subject matter and the prior art

13. The Examiner admits that Srimuang does not describe “that the tasks are allocated based upon coincidence of a plurality of occurrences, that the triggering event is conditioned upon coincidence of a plurality of occurrences, or acquiring data to

identify the coincidence of the plurality of occurrences.” Answer 10.

The level of skill in the art

14. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent art of project management systems. We will, therefore, consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

15. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed,

this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the

inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Graham*, 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1-11 and 14-19 as being anticipated by Srimuang.

Claims 1, 3, 4, 6, 7, and 19

The Appellant argues claims 1, 3, 4, 6, 7, and 19 as a group. App. Br. 21. We select claim 1 as the representative claim for this group, and the remaining claims 3, 4, 6, 7, and 19, stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

The Appellant and the Examiner dispute whether Srimuang describes a step of initiating, in response to receiving information identifying an event, an executable procedure, which *automatically* selects a task from a plurality of different tasks. App. Br. 17, Reply Br. 3-4 and Answer 13-20.

The Appellant and the Examiner equate the claimed “task” to different portions of Srimuang. In their argument, the Appellant equates the appointment or service request entered by the user in Srimuang to the claimed task (App. Br. 17) and argue that this appointment or service request is *manually* selected instead of *automatically* as claimed. App. Br. 13-20.

In the Answer, the Examiner equates a portion of the service that appears on an employee’s schedule in Srimuang as the claimed task and the overall service request entered by the user in Srimuang as the claimed event. Answer 13-14. The Examiner asserts that the portion of the service

appearing on an employee's schedule is automatically selected. Answer 13-14.

Anticipation is determined by first construing the claims and then comparing the properly construed claims to the prior art. *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1346 (Fed. Cir. 2002). "The law of anticipation does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under attack, as construed by the court, "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it." *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

Claim 1 requires a step of initiating an executable procedure, in response to received information identifying an event, for automatically selecting a task from a plurality of different tasks. The Specification does not contain an express definition of "task." FF 1. We find that the ordinary and customary meaning of task is "a piece of work assigned or done as part of one's duties." FF 2. *See also*, FF 3. We construe claim 1 to require a step of initiating an executable procedure for automatically selecting a piece of work from a plurality of different pieces of work. The step of initiating performed in response to received information identifying an event.

Given this construction, we agree with the Examiner that the claimed task reads on Srimuang's description of portions of a service for which appointments are scheduled on employees' schedules. Taking Srimuang's example of an appointment for a medical exam in paragraph [0013], the medical exam is the service that is requested by the user. FF 6. Upon

receiving the request, the system in Srimuang schedules a nurse for a 10 minute interval and a separate 20 minute interval and a doctor for a 30 minute interval. FF 6. In this example, the nurse and doctor are each assigned a piece of the service. The portions of the medical exam assigned to the nurse or doctor is the claimed “task.” This is consistent with our construction of claim 1 above. We note that nothing in claim 1 restricts equating the claimed task to the entire service (*e.g.* “medical exam), as the Appellant argues, instead of the portion of the service assigned to the nurse or doctor (*e.g.* the portion of the exam performed during the first 20 minutes), as the Examiner argues.

Next, we find that Srimuang describes initiating, in response to received information identifying an event, an executable procedure that *automatically* selects the tasks from a plurality of tasks. The Examiner equates the claimed event to the user’s request for a service and the information identifying the event equates to the request that is transmitted to the system in Srimuang. *See* Answer 13-14. We find nothing in claim 1 that precludes the Examiner’s interpretation above. Srimuang describes that the system automatically selects the tasks when the request is received. FF 7-8. Srimuang states, “. . . because the customer does not need to know what combination of individuals and resources are required for the type of service that he wants this is taken care of automatically by service data 132 defined by group administrator for the vendor.” Srimuang [0080].

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 1, and claims 3, 4, 6, 7, and 19, dependent thereon, under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 2

For the same reasons as above, the Appellant additionally argues that Srimuang does not describe *automatically* selecting a particular task schedule from a plurality of task schedules as recited in claim 2, but instead *manually* selects a particular task schedule. App. Br. 20-22 and Reply Br. 6-7. However, for the reasons above, we find that Srimuang describes automatically selecting a task and further describes the scheduling system automatically selecting a particular task schedule from among a plurality of task schedules to schedule the task (FF 7-8). Srimuang states, “. . . the scheduling program may specifically schedule the various people and resources for only portions of the service time interval where they are needed.” Srimuang [0109].

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 2 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 5

For the same reasons argued with respect to claim 1, the Appellant argues that Srimuang does not describe “at least one executable procedure to automatically and programmatically without user intervention select said task and assign said identifier.” Answer 22 (Emphasis original). For the same reasons as above, we find that Srimuang describes automatically and programmatically without user intervention selecting the task.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 5 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claims 8-11

The Appellant argues claims 8-11 as a group. App. Br. 29. We select claim 1 as the representative claim for this group, and the remaining claims 9-11 stand or fall with claim 8. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

Claim 8, like claim 2, requires a step of *automatically* initiating an executable procedure that selects a task schedule from a plurality of different task schedules and assigns a task representative identifier to the task schedule. The Appellant again argues that Srimuang does not describe *automatically* selecting a task schedule from a plurality of different task schedules for the same reasons as argued with respect to claims 1 and 2. App Br. 23-29 and Reply Br. 6. For the same reasons as above, we find the Appellant's argument unpersuasive. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 8, and claims 10-11, dependent thereon, under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 14

Claim 14 depends from claim 8 and further recites that that the executable procedure removes a task representative identifier from a task schedule in response to a triggering event. The Appellant argues that Srimuang does not describe removing a task representative identifier. App. Br. 29-30 and Reply Br. 8-9. The Examiner asserts that Srimuang describes revising a task schedule according to priority rules when scheduling conflicts occur and that claim 14 reads on this description. Answer 16-17.

We agree with the Examiner. Srimuang describes "revising" a calendar (FF 10), which one of ordinary skill in the art would understand not

only adding but removing appointments. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 14 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 15

Claim 15, like claim 1, requires a step of *automatically* and programmatically initiating an executable procedure that selects a task from a plurality of different tasks and assigns a task representative identifier to a particular task schedule. The Appellant again argues that Srimuang does not describe *automatically* selecting a task schedule from a plurality of different task schedules for the same reasons as argued with respect to claims 1. App Br. 30-37 and Reply Br. 6. For the same reasons as above, we find the Appellant's argument unpersuasive. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 15 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 16

Claim 15, like claims 1 and 2, requires a step of *automatically* initiating an executable procedure that selects a task from a plurality of different tasks and *automatically* selectively assigns a task representative identifier to a particular task schedule. The Appellant again argues that Srimuang does not describe *automatically* selecting a task schedule form a plurality of different task schedules for the same reasons as argued with respect to claims 1 and 2. App Br. 37-40 and Reply Br. 6. For the same reasons as above, we find the Appellant's argument unpersuasive. Accordingly, we find that the Appellant has not shown that the Examiner

erred in rejecting claim 16 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 17

Claim 17 requires a step of *automatically* initiating an executable procedure to selects a task schedule from a plurality of different task schedules and to *automatically* selectively assign a task representative identifier to a particular task schedule, in response to a triggering event. The Appellant again argues that Srimuang does not describe *automatically* selecting a task schedule from a plurality of different tasks schedules for the same reasons as argued with respect to claims 1 and 2. App Br. 40-44 and Reply Br. 6. For the same reasons as above, we find the Appellant's argument unpersuasive. Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 17 under 35 U.S.C. §102(e) as anticipated by Srimuang.

Claim 18

Claim 18, unlike claim 1 recites an apparatus. However, like claim 1, claim 18 recites an executable procedure for *automatically* selecting a task from a plurality of different tasks and assigns a task representative identifier to a particular task schedule. The Appellant again argues that Srimuang does not describe *automatically* selecting a task or a task schedule from a plurality of different tasks and task schedules for the same reasons as argued with respect to claims 1 and 2. App Br. 30-37 and Reply Br. 6. For the same reasons as above, we find the Appellant's argument unpersuasive. Accordingly, we find that the Appellant has not shown that the Examiner

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erred in rejecting claim 18 under 35 U.S.C. §102(e) as anticipated by Srimuang.

The rejection of claims 12 and 13 as being unpatentable over Srimuang and Mayhak.

Claim 12

The Appellant argues that neither Srimuang nor Mayhak teaches each and every limitation of independent claim 8 and claim 12, dependent thereon, and, therefore, the Examiner has not established a *prima facie* showing of obviousness. App. Br. 48-49 and Reply Br. 10-11.

First, the Appellant argues that neither Srimuang nor Mayhak describe automatically initiating execution of an executable procedure to select a task schedule from a plurality of task schedules and assigning a representative identifier to the selected task schedule. App. Br. 48-49 and Reply Br. 10. We note that claim 12 depends upon claim 8, which recites this limitation. As discussed above with respect to claims 1, 2 and 8, we find that Srimuang describes automatically initiating an executable procedure that selects a task schedule from a plurality of task schedules.

Next, the Appellant argues that neither Srimuang nor Mayhak describes that “the executable procedure conditions allocation of the task to the task schedule associated with the particular entity upon coincidence of a plurality of occurrences” and a step of “acquiring data to identify the coincidence of the plurality of occurrences” as recited in claim 12. App. Br. 49-50 and Reply Br. 10-11.

We find that Srimuang teaches that scheduling the task is based upon acquired data related to the availability of required employees and resources used in performing the task. FF 9. This description in Srimuang teaches the

limitations at issue in claim 12. The claimed coincident occurrences are the available appointments in all required employees' and resources' schedules at the required time. We note that claim 12 does not restrict the occurrences to be past occurrences or future occurrences and therefore, encompasses both. Mayhak also teaches scheduling employees to care for patients based on information in a patient profile and an employee profile. FF 12. A procedure (*i.e.* task) is allocated to an employee if the patient's requirements, which includes type of procedure and the patients schedule (*i.e.* occurrence), coincide with the ability of the employee to care for the patient (*i.e.* occurrence). FF 12.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 12 under 35 U.S.C. § 103(a) as unpatentable over Srimuang and Mayhak.

Claim 13

The Appellant argues that neither Srimuang nor Mayhak teaches that “a. the triggering event is conditioned upon coincidence of a plurality of occurrences, and b. further inquiring data to identify the coincidence of the plurality of occurrences” as recited in claim 13 and, therefore, the Examiner has not established a *prima facie* showing of obviousness. App. Br. 50-52 and Reply Br. 11-12.

For the same reasons as discussed above with regards to claim 12, we find that Srimuang and Mayhak teach this limitation. Both teach that a request for an appointment is conditioned upon the coincidence of the availability of all required employees and resources. FF 9 and 12.

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Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claim 13 under 35 U.S.C. § 103(a) as unpatentable over Srimuang and Mayhak.

CONCLUSIONS OF LAW

We conclude that the Appellant has not shown that the Examiner erred in rejecting:

claims 1-11 and 14-19 under 35 U.S.C. §102(e) as anticipated by Srimuang, and

claims 12 and 13 under 35 U.S.C. §103(a) as unpatentable over Srimuang and Mayhak, Jr.

DECISION

The decision of the Examiner to reject claims 1-19 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

mev

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Appeal 2008-003067
Application 10/007,370

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